

STATE OF MICHIGAN
COURT OF APPEALS

SOUTHFIELD PUBLIC SCHOOLS,

Plaintiff/Appellant/Cross-Appellee,

v

DEPARTMENT OF EDUCATION,

Defendant/Appellee/Cross-
Appellant.

UNPUBLISHED

September 16, 2014

No. 316856

Oakland Circuit Court

LC No. 2012-129161-AA

Before: RIORDAN, P.J., and CAVANAGH and TALBOT, JJ.

PER CURIAM.

This case arises from complaints filed by the parent of a disabled student (E.D.) formerly enrolled in the Southfield School District (Southfield). After an investigation by the Michigan Department of Education (the Department) concluded that Southfield had failed to provide the necessary services, and Southfield and the child's parent could not reach an agreement regarding compensatory services, the Department issued a corrective action plan that required Southfield to provide 297 hours of compensatory services to be delivered by two outside contractors. On appeal, the circuit court concluded that it had jurisdiction to resolve the appeal and that the Department had not acted illegally. Southfield now appeals and the Department cross-appeals. We vacate the circuit court's May 30, 2013 opinion and order, and remand the matter to the circuit court for entry of an order dismissing the case for lack of subject-matter jurisdiction.

As background, the Individuals with Disabilities Education Act (IDEA)¹ was designed in large part "to ensure that all children with disabilities have available to them a free appropriate public education [(FAPE)] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living[.]"² To receive federal assistance under IDEA, states must agree to comply with certain

¹ 20 USC 1400 *et seq.*

² 20 USC 1400(d)(1)(A).

federally imposed conditions.³ Among other things, states are required to establish two avenues to resolve disputes regarding the education of children with disabilities: an informal complaint process (also referred to as a state complaint), and a formal administrative hearing process (also referred to as a due process complaint).⁴ Because IDEA's state complaint process is implemented in Part 8 of Michigan's Administrative Rules for Special Education (MARSE),⁵ Michigan's state claim process is also referred to as a Part 8 complaint.

State complaints in Michigan may be filed with the Department by individuals or organizations within one year of an alleged violation of IDEA.⁶ Complaints are investigated by the Department and the intermediate school district, and the Department must "issue a final written decision within 60 calendar days after a complaint is filed."⁷ The school must "correct violations as directed by the [D]epartment" and "submit proof of compliance to the [D]epartment and the intermediate school district documenting that the violation [was] corrected within the timeline specified in the corrective action."⁸ A school's failure to cooperate with the investigation or to correct known violations may subject the school to a number of penalties, including the withholding of federal and state funds and the enforcement of the corrective action through court action.⁹

Due process complaints related to the provision of FAPE may be brought by a parent or a local educational agency (LEA).¹⁰ Once a due process complaint is filed, the matter proceeds to a mandatory resolution session unless the parent and the LEA agree either to waive the meeting or to use the mediation process described in the statute.¹¹ If a resolution is not reached within 30 days of receipt of the complaint, the matter may proceed to a hearing before an impartial administrative hearing officer.¹² Parties have the right to be represented or advised by an attorney; "to present evidence and confront, cross-examine, and compel the attendance of witnesses;" "to a written, or, at the option of the parents, electronic verbatim record of such hearing;" and "to written, or, at the option of the parents, electronic findings of fact and

³ *Jenkins v Carney-Nadeau Pub Sch*, 201 Mich App 142, 144; 505 NW2d 893 (1993); 20 USC 1412.

⁴ 20 USC 1415(b)(6); 20 USC 1415(b)(7).

⁵ Mich Admin Code, R 340.1701 through 340.1873.

⁶ Mich Admin Code, R 340.1851.

⁷ Mich Admin Code, R 340.1853.

⁸ Mich Admin Code, R 340.1854.

⁹ Mich Admin Code, R 340.1855.

¹⁰ 20 USC 1415(b)(7)(A), (f)(1)(A).

¹¹ 20 USC 1415(f)(1)(B), (g).

¹² 20 USC 1415(f)(1)(B)(ii).

decisions”¹³ If the hearing is conducted by a LEA, any aggrieved party may appeal the outcome to the state educational agency.¹⁴ If the hearing was conducted by the state educational agency, a “party aggrieved by the findings and decision” has the right to bring a civil action in state or the appropriate federal court contesting the decision in so far as it “directly involves a disabled child’s right to a FAPE.”¹⁵

On cross-appeal, the Department argues that dismissal of the circuit court action for lack of subject-matter jurisdiction was warranted because all administrative remedies were not exhausted by Southfield. We agree. “The determination whether the circuit court has jurisdiction is a question of law that we review de novo.”¹⁶

Typically, before seeking judicial review of an administrative action, all remedies available within the administrative agency must be exhausted.¹⁷ “[T]he purpose of the IDEA’s requirement that administrative remedies be exhausted is to allow the school district to employ its educational expertise in developing a special educational plan and to develop a factual record.”¹⁸ Failure to exhaust administrative remedies may be excused where exhaustion would be futile or “the agency’s final decision would not provide an adequate remedy.”¹⁹

“A parent or public agency may file a due process complaint . . . relat[ed] to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.”²⁰ Here, Southfield’s appellate brief to the circuit court alleges in part that the failure of the Part 8 complaint investigation report to contain findings of fact, conclusions, and the reason supporting an award of compensatory services through the use of a private provider chosen by E.D.’s parent resulted in the report not being authorized by law. In making such allegations, Southfield argues that the Department should have made a more extensive record regarding Southfield’s ability to provide the compensatory services required by the

¹³ 20 USC 1415(h)(2)-(4).

¹⁴ 20 USC 1415(g), (i)(1)(A).

¹⁵ 20 USC 1415(i)(2)(A); *Traverse Bay Area Intermediate Sch Dist v Mich Dep’t of Ed*, 615 F3d 622, 626-629 (CA 6, 2010) (interpreting 20 USC 1415(i)(2)(A) to prohibit a local educational agency from mounting a purely procedural challenge to an unfavorable state agency administrative decision).

¹⁶ *Ashley Ann Arbor, LLC v Pittsfield Charter Twp*, 299 Mich App 138, 147; 829 NW2d 299 (2012) (citation and quotation marks omitted).

¹⁷ MCL 24.301; *Farmers Ins Exch v South Lyon Community Sch*, 237 Mich App 235, 243; 602 NW2d 588 (1999).

¹⁸ *Farmers Ins Exch*, 237 Mich App at 243.

¹⁹ *Turner v Lansing Twp*, 108 Mich App 103, 109; 310 NW2d 287 (1981) (citation and quotation marks omitted).

²⁰ *Filing a Due Process Complaint*, 34 CFR 300.507(a)(1) (2014).

amended corrective action plan. Whether the services are required and whether Southfield has the capability to provide the services are matters within the jurisdiction of a hearing officer. Furthermore, a hearing officer could determine that Southfield was not responsible for providing compensatory services to E.D., and grant Southfield the relief it requested from the circuit court, namely, for the findings of the investigation to be reversed and no further efforts made to enforce the amended corrective action plan. Southfield also argues on appeal to this Court that the Department's requirement that compensatory services be provided to E.D. through the use of a private provider violated both the Public Employment Relations Act²¹ and the Revised School Code.²² That argument also strictly relates to the appropriateness of the remedy fashioned by the Department, relief from which is within the purview of a due process hearing. As a result, because Southfield had an administrative forum in which to challenge the mandates contained in the amended corrective action plan regarding the provision of compensatory services, filing a due process complaint would not have been futile. Accordingly, Southfield failed to exhaust its administrative remedies as required.

Southfield's appeal to the circuit court also makes purported procedural allegations against the Department. Specifically, Southfield asserts that the Department's refusal to review Southfield's request for reconsideration of the amended final report and the amended corrective action plan of August 15, 2012 violated its own rules and procedures.²³ It alternatively contends that the Department's interpretation of its rules and procedures, in failing to address the motion for reconsideration, was arbitrary and capricious as well as contrary to public policy. The filing of a due process complaint initiates the administrative appeals procedure.²⁴ Thus, the due process complaint procedure in essence serves as a reconsideration of the results of the state complaint process. Because the filing of a due process complaint by Southfield was the appropriate next step, it was unnecessary for the circuit court to make a determination regarding whether the Department erred in refusing to address Southfield's motion for reconsideration.²⁵

²¹ MCL 423.201 *et seq.*

²² MCL 380.1 *et seq.* This Court notes that this allegation was not made by Southfield in its claim of appeal or amended claim of appeal to the circuit court. Rather, Southfield asserted that the Department improperly shifted the responsibility of the Troy School District to Southfield to provide FAPE to E.D., which resulted in the Department's Part 8 complaint investigation report not being authorized by law.

²³ The Department alleges on cross-appeal that only the corrective action plan was amended; not the final report.

²⁴ See *Farmers Ins Exch*, 237 Mich App at 243.

²⁵ See MCL 24.301. This Court would note that this case is distinguishable from the case involving Beecher Community Schools, which is referenced by Southfield and was before the Michigan Administrative Hearing System (MAHS), as Beecher's alleged entitlement to relief stemmed entirely from purported procedural errors made by the Department. This Court also notes that the entirety of the decision and order of MAHS in that case was not provided to this Court and, that notwithstanding, it is not binding on this Court.

Accordingly, as all administrative remedies were not exhausted, the circuit court's May 30, 2013 opinion and order is vacated and the case is remanded to the circuit court for entry of an order dismissing the case for lack of subject-matter jurisdiction.²⁶

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan

/s/ Mark J. Cavanagh

/s/ Michael J. Talbot

²⁶ As the resolution of the jurisdictional issue is dispositive, we find it unnecessary to address Southfield's issues on appeal.